



January 11, 2001

Ms. Hollis D. Young
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-0112

Dear Ms. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143668.

The San Antonio Metropolitan Health District (the "district") received a request for (1) information relating to an investigation conducted by the district into a report of Legionnaires' disease, and (2) any news releases by the district. First, you state that you have no information responsive to the second category of information requested. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). With respect to the information relating to the investigation, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Chapter 81 of the Health and Safety Code, of which section 81.046 is a part, is commonly referred to as the Communicable Disease Prevention and Control Act. Under section 81.042, various individuals, including health professionals, school and child care administrators, and owners and managers of food handling or processing establishments, are required to make reports to the "local health authority" of instances of suspected cases of "reportable diseases," including communicable diseases, and "health conditions." Section 81.046 of the Health and Safety Code provides in pertinent part:

(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Public Information Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. Assuming that all of the information you have submitted to this office as responsive to the request was gathered or created by the district pursuant to the provisions of chapter 81, we agree that section 81.046(b) governs the release of this information.¹ Therefore, we conclude that the district must withhold the documents you submitted to this office in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

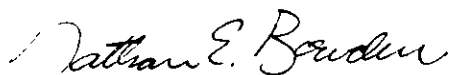
¹None of the conditions laid out in subsections (c) or (d) appear to be present in this instance.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Scholoss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 143668

Encl: Submitted documents

cc: Mr. Larry D. Wilson, CPCU
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(w/o enclosures)